lation of the creator's intention. But where the power is general, there is no reason, as regards the donee alone, why he should not be liable on his promise. Damages may therefore be recovered against his estate. *In re Parkin, supra.*

QUASI-CONTRACTS — RIGHTS ARISING FROM MISTAKE OF FACT — RECOVERY FOR BENEFITS CONFERRED UNDER A CONTRACT WITH AN UNAUTHORIZED AGENT. — Plaintiff agreed with the defendant's general manager to make certain improvements on defendant's land in return for a twenty-year lease of the land. The manager had no authority to make such a contract. After the plaintiff had been working on the improvements for about five months, evidently with the defendant's knowledge, defendant offered to give plaintiff a lease for ten years, but no longer. Plaintiff quit work, and sues for the value of the improvements already made. *Held*, that the plaintiff recover. *Underhill* v. *Rutland R. Co.*, 98 Atl. 1017 (Vt.).

At one time liability in quasi-contract was thought to be based on a form of implied contract. See WOODWARD, QUASI-CONTRACTS, § 4. If this were true, it is obvious that no recovery could be had for services rendered under a void contract, for the contract itself must rebut any inconsistent implication. See dissenting opinion of Ingraham, J., in *Lyon* v. *West Side Transfer Co.*, 132 App. Div. 777, 117 N. Y. Supp. 648. It is a survival of this idea of implied contract which causes some courts to hold that the defendant must knowingly receive the benefits in order to be liable in quasi-contract. *Spooner* v. *Thompson*, 48 Vt. 259; *Kelley* v. *Lindsey*, 7 Gray (Mass.) 287. *Cf. Otis* v. *Inhabitants of Stockton*, 76 Me. 506. But if the benefits of a contract made by an unauthorized agent were knowingly received, it would usually amount to a ratification of the agent's contract. See MECHEM, AGENCY, 2 ed., §§ 434, 436, n. 16. The true basis of liability in quasi-contract is that the defendant has received a benefit from the plaintiff which it would be inequitable for him to keep; it does not rest on any real contractual obligation whatever. KEENER, QUASI-CONTRACTS, 19. One who receives the fruits of a contract made by an unauthorized agent should therefore be liable irrespective of his knowledge of the transaction, if actually benefited thereby, and it is usually so held. *Reid* v. *Rigby*, [1894] 2 Q. B. 40; *Leonard* v. *Burlington, etc. Ass'n*, 55 Iowa 594, 8 N. W. 463. *Cf. Van Deusen* v. *Blum*, 18 Pick. (Mass.) 229. But *cf. Bond* v. *Aitkin*, 6 Watts & S. (Pa.) 165. In the principal case there was considerable evidence that the defendant knowingly received the benefits of its agent's contract, so that it might well have been held to have ratified it. *Cf. Clark* v. *Hyatt*, 118 N. Y. 563, 23 N. E. 891. But if such is not the case, the recovery in quasi-contract is clearly justified. *Hawkins* v. *Lange*, 22 Minn. 557; *Werre* v. *Northwest Thresher Co.*, 27 S. D. 486, 131 N. W. 721; *Henrietta National Bank* v. *Barrett*, 25 S. W. 456 (Tex.).

SALES — TIME OF PASSING OF TITLE — MISTAKE AS TO WHOM GOODS ARE INTENDED FOR. — Seller was owner of 1000 bushels of oats lying in a ship in the harbor. He sold 500 bushels to the plaintiff and 500 to the defendant. Both the plaintiff and the defendant hired the same lighterman, X., to bring their grain to shore. X. got 500 bushels in one of his boats, which he took for the defendant; but the seller intended this grain for the plaintiff, and made out his papers accordingly, one of which, in the nature of a consignment, was delivered to X. but X. did not open it. This load was delivered to the defendant and appropriated by him. X. got the remaining 500 bushels in another boat and the converse mistake occurred. This boat was sunk. The plaintiff sues for the first load of grain. It was found as a fact that neither the seller nor X. was negligent in making the mistake. *Held*, that title to the first load passed to plaintiff. *Denny* v. *Skelton*, 115 L. T. R. 305.

According to the English law, where the goods are part of an undivided mass

and the sale is of a specific quantity, and not of a fractional part of the mass, no title to an undivided share of the whole passes. *Austen* v. *Craven*, 4 Taunt. 644. As then title did not pass at the time of sale, and among the acts still to be done was delivery to the buyer's agent, title did not pass before such delivery. SALE OF GOODS ACT, 1893, § 18 (5). See WILLISTON, SALES, § 276. Did the delivery to X., then, pass title to the defendant? In saying that title passes according to the intent of the parties, it must be remembered that it is the expressed intent which counts, and if the only interpretation of the seller's actions must be to pass title to the defendant, title would so pass regardless of his secret intent. *Wigton* v. *Bowley*, 130 Mass. 252. *Cf. Bragdon* v. *Metropolitan Ry.*, 2 A. C. 666. But in the principal case the expressed intent of the seller was ambiguous. It was capable of being understood by X. in two ways without any negligence on his part. Under these circumstances the seller should be allowed to show the mistake, and no title would pass to the defendant. *Campbell* v. *Mersey Docks*, 14 C. B. R. (N. S.) 412. *Cf. Raffles* v. *Wichelhaus*, 2 H. & C. 906. This would be equally true whether X. was regarded as defendant's personal agent or merely as an agent for transportation. Did the title pass to the plaintiff? If X. was considered as the defendant's personal agent, there would be no implied authority in the seller to appropriate by delivery for the buyer, but consent by the plaintiff's agent to the appropriation at the time of delivery would be necessary. If X. was regarded merely as an agent for transportation, there is some force in the court's argument that the seller has without negligence made an appropriation according to the terms of the contract, to which the buyer must be taken to assent. But it is a question whether the appropriation was a proper one, since X. was not bound as between X. and the seller to deliver to the proper party, and no cause of action would accrue to the plaintiff against X. in case of misdelivery. It might well have been held that the case fell within the rule of misdirected articles. *American Jewelry Co.* v. *Witherington*, 81 Ark. 134; *Woodruff* v. *Noyes*, 15 Conn. 335; *Tinn* v. *Clark*, 94 Mass. 522. But even if the title remained in the seller at the time of delivery, the case may perhaps be supported on the ground that the acts of the seller amounted to an offer to pass the title, which was accepted by the plaintiff by electing to treat the goods as his. See WALD'S POLLOCK ON CONTRACTS, 3 ed., 12.

TENANCY IN COMMON — CONVEYANCE BY METES AND BOUNDS — PARTITION. — A tenant in common of a ninety-nine acre tract conveyed by metes and bounds twenty-seven acres thereof to the defendant in this partition suit. The defendant thereupon improved the parcel. The plaintiff, a co-tenant on the ninety-nine acre tract, now seeks partition of the twenty-seven acres. *Held*, that the ninety-nine acres exclusive of improvements will be valued and if the twenty-seven acres do not exceed the grantor's share they will be allotted the defendant. *Highland Park Mfg. Co.* v. *Steele*, 235 Fed. 465.

A conveyance by metes and bounds of a parcel of a larger tract, by one of several tenants-in-common of the larger tract, cannot give good title to that parcel, for the grantor does not own it. *Duncan* v. *Sylvester*, 24 Me. 482. Nor can the deed operate to convey the grantor's undivided interest in the entire tract, for it does not purport to. *Soutter* v. *Porter*, 27 Me. 405. The grantee in such a case cannot even obtain the tenancy in common of the grantor as to the part specified, for courts refuse to allow such a conveyance on account of the difficulty, if not impossibility, of partitioning the whole tract under such circumstances. See *Boggess* v. *Meredith*, 16 W. Va. 1, 28. But *cf. Mora* v. *Murphy*, 83 Cal. 12, 23 Pac. 63. But, if the conveyed parcel should on partition of the whole tract fall to the grantor, it will by estoppel pass to his grantee. See *Soutter* v. *Porter*, *supra*, p. 417. Moreover, lands improved by a co-tenant will on partition be awarded him if his co-tenants will not be prejudiced. *Noble* v. *Tipton*, 219 Ill. 182, 76 N. E. 151. It seems therefore that the court should re-